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UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

**FLIR SYSTEMS, INC.**, an Oregon  
corporation,

No. 3:10-cv-00971-HU

Plaintiff,

v.

**SIERRA MEDIA, INC.**, a Washington  
corporation, and **FLUKE CORPORATION**, a  
Washington corporation,

Defendants.

Defendant/Counterclaim Plaintiff Fluke  
Corporation's  
MOTION TO DISMISS FOR FAILURE TO  
STATE A CLAIM AND MOTION TO  
STRIKE

Pursuant to Fed. R. Civ. P. 12(b)(6) & 12(f)

ORAL ARGUMENT REQUESTED

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CLAIM AND MOTION TO STRIKE

**LOCAL RULE 7.1 CERTIFICATION**

Counsel for Defendant/Counterclaim Plaintiff Fluke Corporation (“Fluke”) conferred in good faith with counsel for Plaintiff/Counterclaim Defendant Flir Systems, Inc. (“Flir”) prior to the filing of this Motion. The parties were unable to resolve the issues raised in this Motion.

**MOTION**

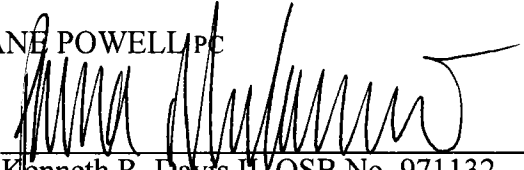
Fluke respectfully brings this Motion pursuant to Federal Rules of Civil Procedure 12(b)(6) and 12(f). The Second Amended Complaint (“SAC”) should be dismissed in its entirety as procedurally improper because Flir failed to seek leave to amend by the Court’s July 8, 2011 deadline. In the alternative, Fluke moves with respect to the SAC’s newly-added material—specifically, Fluke moves to dismiss Counts Two and Seven and moves to strike Flir’s demand for punitive damages.

The SAC does not state a claim for unfair competition under Oregon common law (Count Two) because it fails to allege public confusion as a result of the misappropriation of intellectual property or misuse of a business or product name. In addition, Flir’s claim for “Agency” (Count Seven) should be dismissed because “Agency” is not a viable cause of action under Oregon law. Finally, Flir’s demand for punitive damages should be stricken because it is contrary to Article I, Section 8 of the Oregon Constitution, which prohibits the recovery of punitive damages in actions based on speech.

DATED: August 8, 2011

LANE POWELL PC

By

  
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